

“Lost in the Shuffle Revisited”

The Education Law Center’s Report on the Education of Children in Foster Care in Pennsylvania

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Acknowledgments

The Education Law Center gives special thanks to Vanessa Coke and Michael Chu, Esq, who, as Legal Interns at the Center, provided invaluable help to this project. Thanks also to Anne Shenberger, from the Southeast PA Regional Office of Children, Youth and Families; Maureen Cronin, from the Office of Mental Retardation; and to Letty Thall and Bernadette Bianchi from the Children, Youth and Family Council Education Consortium, who helped us distribute surveys.

This Report was made possible with the support of The 1957 Charity Trust and the Pennsylvania Protection & Advocacy, Inc. We thank them for their support.

Pennsylvania Protection & Advocacy, Inc. support was provided pursuant to the Developmentally Disabled Assistance and Bill of Rights Act, P.L. 101-496, and the P&A for Mentally Ill Individuals Act, P.L. 99-319.

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January, 2002

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I. WHAT IS THE PROBLEM?

For almost two decades, ELC-PA has worked to insure quality educational opportunities for children in foster care.^{1[1]} In the early 1980's, ELC-PA discovered that, by virtue of an antiquated but still operative statute, school districts in Pennsylvania could refuse to admit into their schools "non-resident" children living there with foster families.^{2[2]} Thus, children removed from their homes because of egregious family circumstances by one arm of the government, were being denied public educations by yet another. And we discovered that this was happening more frequently to older children of color, children with disabilities, and children who needed English language support. Eventually, ELC-PA brought and won a class action lawsuit challenging the constitutionality of this statute.^{3[3]} Now children living with foster families have the right to attend school where they live. Unfortunately, this ruling has not eliminated all of the barriers to public education facing children living in foster care.

There are more than half a million children in foster care in the United States.^{4[4]} While public education is a right and a necessity for all Pennsylvania children, for children in foster care, who have already encountered massive family disruption and often physical or sexual abuse, that right is often elusive. In the last few years, ELC has received a heavy volume of requests for assistance from caseworkers and others working on behalf of these children.

Foster children often encounter barriers to enrolling in school, and to obtaining quality education programs. It does not help that there are many important, and unanswered, questions regarding these children's rights. For example, who, in the absence of the birth parent, is authorized to consent to emergency medical care or class trips. How can these children gain access to enhanced educational opportunities, such as charter schools and magnet programs, when they were not placed in the district until after enrollment was closed? What educational and

^{1[1]} This Report is called, "Lost in the Shuffle – *Revisited*." ELC published a report called "Lost in the Shuffle" more than 15 years ago that explored the problems experienced by children with disabilities in foster care. Things have improved somewhat since then – but not enough. So we are revisiting those and related issues in this document.

^{2[2]} Section 1305(b) of the Public School Code permitted school districts to refuse to provide education to non-resident children placed with resident foster parents.

^{3[3]} The decision of the United States District Court in the case of *Nancy M. v. Scanlon*, 666 F. Supp. 723 (E.D. Pa. 1987), held Section 1305(b) unconstitutional on the grounds that it violated the Equal Protection Clause of the federal Constitution. The Court held that non-resident children placed in foster care must be educated on the same basis as resident students.

^{4[4]} Adoption and Foster Care Reporting System (AFCARS). See, <http://www.acf.dhhs.gov/programs/cb/dis/afcars/about.html>.

medical records can be demanded as conditions of school admission, and how can the prompt transmission of these records be facilitated? How can we insure that children with disabilities who are in foster care have access to “surrogate parents” when their birth parents are not available?

There are almost as many “answers” to these questions as there are school districts. The responsible Pennsylvania agencies must establish policies and practices that ensure that foster children are promptly enrolled in public schools where they live, and, once enrolled, are protected from unequal treatment.

II. WHAT DID ELC UNDERTAKE TO DO ABOUT THE PROBLEM?

Several years ago, ELC undertook to collect and analyze information on these problems, and to elicit suggestions on how they could be fixed. ELC sent surveys to school districts, Children and Youth Agencies, private foster care providers, and early intervention providers.^{5[5]} In general, the responses confirm what we already knew anecdotally — there are delays in enrolling and serving foster children in school, particularly children with identified special education needs. Often stakeholders reported problems from their perspective — which normally meant that they saw other agencies as the source of the problems. Nevertheless, some areas of consensus emerged.

A disclaimer: We are lawyers and education advocates, not professional pollsters or statisticians. Our goal is to stimulate interest, concern, and debate. We urge the responsible agencies and the stakeholders to go beyond the findings and recommendations in this Report, and to engage in further fact finding and debate – especially about how these problems can be solved. But above all else, we urge them to step up to the plate and act.

^{5[5]} Copies of the surveys circulated by ELC-PA are available upon request. Attached to this report are maps that show responses by county and constituency.

The chart below summarizes the general characteristics of the respondents and the children they serve.^{6[6]}

Stakeholder	Responses	Counties	Children Served	Foster Children	FC who need Sp. Ed. Or EI ^{7[7]}
School Districts	61	34	196856	2485	694
County Children and Youth Agencies	10	10	11938	11938	11463
Private Foster Care Providers	59	25	7611	7611	3245
Early Intervention (birth to 3)	30	24	9492	400	400
MAWAs (EI agency for Ages 3-5)	13	12	10429	310	310

Participation in the surveys was voluntary, and they were distributed during the 1999-2000 school year. The surveys covered, among other things, enrollment, access to special education and early intervention services, and surrogate parent procedures. In some cases respondents were asked to rank certain issues according to the amount of difficulty experienced, and were asked to share their experiences, problems and recommendations for change.^{8[8]}

The last section of this report focuses on recommendations for change from the stakeholders and from the Education Law Center. A key recommendation is that the responsible state agencies, in particular the PA Department of Education, issue statewide policies relating to children in foster care. This is the only way to insure that these students have access to public education services – regardless of where they are placed, or how frequently they are moved.

^{6[6]} In some cases, stakeholders were asked to provide a percentage in response to questions (e.g., percentage of children in foster care with surrogate parents). These percentages were used to provide the figures above.

^{7[7]} EI is “early intervention.”

^{8[8]} ELC also convened “work groups” of stakeholders in Philadelphia and in the NorthEast Region of the state. Our initial goal was to collect preliminary information and to get feedback on our draft surveys. Most of the respondents to our surveys indicated that they would be willing to convene in their regions to discuss the results of the surveys, and to plan for next steps. Unfortunately, ELC was not able to raise the money to complete this next step of the process. However, we believe that there is much more to learn from the people, “in the field and on the line.” We urge the public agencies concerned to convene local roundtables, and to use this report and the preliminary findings as a starting point for refining the recommendations.

III. WHAT BARRIERS TO EDUCATIONAL SERVICES DID WE IDENTIFY?

A. Enrollment

Complying with initial enrollment requirements, and gaining access to prior school records, were considered the biggest problem areas by all three stakeholder groups – school districts, county agencies and private foster care providers. Communication problems between the schools and other agencies was another identified barrier. Districts commented:

Establishing appropriate educational placement is problematic due to lack of records, information, even foster parent does not know information. Knowing who has educational rights and having placement agencies be involved with registering and helping gain academic/special education records [would be helpful].

Our biggest challenge is getting information and approval signatures for students placed in group home facilities. We have found that the lack of communication and providing responses to requests for information from agencies our biggest challenge. There are times when we have to be quite assertive to gain information so we can best meet each student's educational needs

Private providers and county agencies discussed records, obtaining appropriate consents, and attitude problems on the part of school districts as the biggest problems.

We've had many schools pinpointing our children as bad students. Some have even gone as far as to state that they do not want the child back!!

[S]chool districts have difficulty understanding the problems frequently involved in securing parental signatures in the time frames they provide. Also fail to understand our inability to secure immunization records on children who come into foster care from very chaotic situations.

School staff being rude/disrespectful to foster parents and don't observe foster child's confidentiality. Teachers often develop bias against foster children, assume they will be difficult. One child who was especially sensitive about privacy issues reported that his teacher once announced his status as a foster child in class via conversation with another staff member.

School districts, county agencies and private foster care providers were asked, on

average, how long it takes to enroll foster children in school. The following chart summarizes the responses.

Stakeholder	Total Responses	<1 week	1-2 weeks	2-3 weeks	3-4 weeks	>4 weeks
School Districts	59/61	57	1	1	-	--
County OCYF Agencies	10/10	4	3	2	-	1
Private Providers	56/59	25	18	6	5	2

More than a majority of the county and private foster care providers (56%) reported delays of more than 5 days, and 26% reported delays in excess of 2 weeks. Three districts stated that foster care staff sometimes slow the process down.

The time really varies. It could take up to 2 months when an agency is involved (i.e. the student is placed in a group home). When the student is placed quickly with a family, the time is shortened.

The only time it takes a long time is if the agency does not have minimum information for enrollment.

We require case worker to attend school for enrolling purposes, sometimes their loads slows down the process.

Forty percent (40%) of the county agency respondents reported at least one enrollment delay of 30 days or longer. Three of the private providers reported delays greater than 100 days. **The comments also confirm that foster children with identified special education needs take the longest to enroll.**

Time to enroll varies between districts but mainstream kids are enrolled more quickly than special needs kids.

1. Enrollment Requirements

The delay in enrolling foster children in school is partially due to the lack of uniformity in enrollment requirements. The responses demonstrate that enrollment requirements for foster children vary widely from district to district. An overwhelming majority of the school districts surveyed stated that three or more records were **required** before they would enroll a foster child in school.^{9[9]} Only 3 out of 59 school districts identified immunization records as the **only** record required before a foster child could be enrolled. The following chart lists the records responding school districts require.

Requirement	No. of School Districts
Social Security Card	21/61
Birth Certificate	46/61
Reasons for CY placement	20/61
Court Orders	39/61
Birth parents' signatures	7/61
Psychiatric Evaluation	16/61
Immunization records	57/61
IEP ^{10[10]}	33/61
IFSP ^{11[11]}	33/61
NORA ^{12[12]}	34/61
Education records	40/61

^{9[9]} While school districts were asked what records **must be** supplied before enrolling foster children, some of the comments in the surveys suggest that some districts may have identified the information they would find helpful, but do not necessarily *require*.

^{10[10]} An "Individualized Education Plan," that is, a special education plan for a student.

^{11[11]} An "Individualized Family Service Plan," that is, an early intervention plan for a child under age 3.

^{12[12]} A "Notice of Recommended Assignment." Until recently, this was the name of the form on which special education placements were offered to parents.

Other documents and preconditions to enrollment identified by responding school districts include: the agency placement letter; a custody form completed by the foster parent; a face-to-face meeting with agency staff; all court documents; birth parent signatures on special education forms and consents; a notarized affidavit; the School Enrollment Form from the placing agency which shows birth parents' district of residence; and proof of residency of the foster parents.

County and private agencies reported that they had encountered demands for: records days in advance of enrollment; confidential details including why the child was in foster care; special meetings; that the agency or the foster parent take responsibility, in writing, for the child's behavior; agency reports or evaluations; complete school records; special education records; information and/or signatures from the birth parents; birth certificates; and social security cards. **Given that placement agencies work with a wide variety of districts, with a wide variety of enrollment procedures and requirements, it is no surprise that confusion reigns and delays occur.**

B. Conflicting Agency Policies and Procedures

Private providers and county agencies also reported that differences in their agencies procedures can result in enrollment delays (and, implicitly, reflect their understanding of applicable legal requirements). Some reported that they gather school records and attend IEP and other school meetings. Others stated that their staff sign enrollment forms, and others that their staff were not authorized to do so. Some respondents permit their caseworkers to sign special education consent forms, and others require their caseworkers to secure the legal guardian/parents' signatures. Many of the school district respondents complained that these differences in agency procedures delay students' enrollment.

[We] sign forms as allowed by law.

[We have] no signing rights.

[We do] no[t] sign[], [but we] facilitate any signatures needed from parents or DHS.

C. Educational Opportunities Pending Formal Enrollment

Only six school districts reported that they offer home bound instruction when students' enrollment is delayed; several responded that they have no interim arrangements because enrollment of students in their district is never delayed.

A few private providers reported that their agencies offer some help.

Arranged with the school for homebound instruction pending her starting. Provided individual tutoring until home bound started.

We have an on site diagnostic learning center where we will

educate children who have difficulty during enrollment.

Schools make no interim arrangements but we as an agency try to educate the child in the foster home.

But the majority of stakeholders reported that neither their agency nor the district provides interim educational programs when enrollment is delayed.

D. Alternative Placements

Stakeholders were asked whether children in foster care were more or less likely to be assigned to programs for disruptive students, or other restrictive programs such as homebound.

Stakeholder	Total Responses	Much Less Likely	Less Likely	As Likely	More Likely	Much More Likely
School Districts	57/61	6	7	36	7	1
Private Providers	48/59	-	1	20	23	4
County Agencies	10/10	-	2	2	6	-

As the above illustrates, an alarming 36% of all respondents believed that foster children were more likely than other youngsters to be placed in such programs. Disaggregating the foster care providers and county agencies respondents from the total respondents, the number climbs to 59%.

IV. WHAT BARRIERS TO SPECIAL EDUCATION AND EARLY INTERVENTION SERVICES DID WE IDENTIFY?

We also explored where and why the process falls down for foster children with identified special education needs, and asked the stakeholders to rank the extent to which problems occurred at each stage of the special education process.^{13[13]}

^{13[13]} The rankings include only those respondents who had experience with the issue. The rankings were rarely problematic, occasionally problematic, frequently problematic, and always or almost always problematic.

The school districts who responded to our survey found providing special education services to foster children only “rarely to occasionally” problematic, while private providers and county agencies found getting special education services for foster children, “occasionally to frequently” problematic. School districts considered getting a foster child’s IEP and evaluations from a previous district, and getting necessary parental consents, the biggest problem areas. In addition to the overall difficulty of getting special education services for foster children, the private providers and county agencies ranked getting foster children evaluated/re-evaluated, revising IEPs and appointing surrogate parents, to be the biggest problem areas.

A. Placement in More Restrictive Settings

Private providers and county agencies were asked whether foster children with special education needs are more frequently placed in more restrictive settings such as schools for disruptive students, special education centers or partial hospitalization programs than other children with special education needs.

Stakeholder	Total Responses	Much Less Likely	Less Likely	As Likely	More Likely	Much More Likely
Private Providers	48/59	-	1	20	23	4
County Agencies	9/10	-	1	1	7	-

Sixty percent (60%) of responding private providers and county agencies reported that foster children with special education needs are more likely than other students with disabilities to be placed in more restrictive settings (such as schools for disruptive students, special education centers or partial hospitalization programs). Only 3.5% indicated that foster children were less likely to be placed in such settings.

However, this was not necessarily a negative in these agencies’ minds. Some of the agency respondents reported that these placements were appropriate for the students, and some believed that even more such restrictive options are needed.

In residential care the students are often more disturbed / dysfunctional and this is needed.

Many of our residents are very severely emotionally disturbed; and are not getting an education in regular school setting. They need more restrictive classrooms but [they] are very hard to get.

Other stakeholders considered such placements inappropriate.

Schools are quick to refer foster children to alternative educational programs.

Often such placements are not appropriate.

A. Early Intervention Issues Rated

Prompt receipt of early intervention for children with developmental delays or disabilities is essential, perhaps even more so for children in foster care. However, survey responses confirm that many foster children experience lengthy delays in obtaining services.

Private providers, county agencies, EI providers and MAWAs were asked to report on the incidence rate of problems in the various stages of the early intervention placement process. Stakeholders reported that the biggest problem was getting the necessary parental consent forms signed. Stakeholders also identified appointing surrogate parents, getting foster children evaluated and re-evaluated for EI services and getting foster children's education plans developed and revised when necessary as problem areas.

County children and youth agencies offered the following comments regarding obtaining parental consents and surrogate parent issues:

Obtaining authorization for all purposes is problematic, due to needing signatures from parents, court or administration.

Different policies about appointment of surrogates is confusing and frustrating to us, creates delays for children's services.

We are a combined agency, MR, MH, C&Y. Therefore, we do not have any major problems accessing EI services.

EI Providers and MAWAs offered the following comments regarding the difficulties in obtaining parental consent forms and getting surrogate parents appointed:

Getting legal signature can delay evaluations!

Problems occur more frequently during initial referral phase. Once it is established that birth parent either is interested in EI involvement or not, or [we are unable to contact the parent], we are able to proceed (either with birth parent or surrogate parent).

1. Delays in Obtaining Records

EI providers and MAWAs were asked how long it typically takes to get the records they have requested.

Stakeholder	Total Responses	1-5 days	5-10 days	11-20 days	21-30 days	30+ days

EI Providers	22/30	2	1	6	5	8
MAWAs	9/13	1	2	1	4	1

Sixty percent (60%) of the stakeholders who responded reported delays of 21 days or more, with 30% reporting delays in excess of 30 days. Stakeholders were also asked whether these children were being enrolled even though the districts had not yet received all of the records. **Ninety-two percent (92%) of the MAWAs, and 42% of the EI Providers said that the students were not being enrolled during this period.**

2. Transportation Concerns

A major problem identified in the responses is getting EI agencies to transport children to EI programs.

Transportation is occasionally problematic for children whose EI services are delivered in a setting other than the foster home (when birth parent is involved). CYF or foster care agency provides transportation-if funding isn't available, these kids will not receive services with birth parent involved.

Occasionally, a child is relocated to home where it is not feasible for us to continue to provide transportation and the new foster parent had been led to believe educational services would not be changed or interrupted.

B. Appointment of Surrogate Parents

Children with disabilities who have no “parent” are entitled to have a qualified “surrogate parent” appointed by the responsible local education or early intervention agency.^{14[14]} The surrogate parent then has all the rights of the birth parent in the special education and early intervention processes – for example, signing consents to evaluate; participating in the development of the child’s special education or early intervention program; and initiating dispute resolution proceedings. Federal and state law prohibit the child’s county or private foster care

^{14[14]} The phrases “parent” and “available” are “terms of art” that can be somewhat confusing. The clearest situation is when a child’s birth parents are dead, or parental rights have been terminated, and the child is not living with a family member who is acting as a parent. It is rare for children not in foster care to need a surrogate parent appointed, because there is usually someone who is, at least informally, “acting as a parent.” However, a family court’s determination that a child is “dependent,” and a temporary transfer of custody to a foster parent, does not give the foster parent the right to make education or early intervention decisions for the child – unless the foster parent has been appointed as the child’s surrogate parent by the local educational agency. The details of this complex scheme are beyond the scope of this publication, but more information can be obtained from the Education Law Center, and from our website at www.elc-pa.org.

caseworker from serving as the surrogate parent for a child on his or her caseload.^{15[15]}

Obviously, the surrogate parent requirement was intended to protect children with disabilities in foster care. However, all too often, the “surrogate parent” system does not function smoothly, and results instead in service delays and other problems. To determine the scope of these problems, school districts, pre-school and infants and toddlers agencies (counties) were asked a number of questions.

Since using foster parents as surrogate parents often speeds up the appointment process and helps insure surrogate parents who are knowledgeable about the children’s needs, our first inquiry was the extent to which foster parents were being given a preference in the appointment of surrogate parents for children in their care. The second question was whether this preference was more likely if the child had been with the foster family for a longer time.

Stakeholder	Total Responses	Foster Parent Preferred	No Preference
School Districts	38/51	31	7
EI Providers	16/30	14	2
MAWAs	7/13	7	0

Of the respondents who indicated that foster parents are appointed as surrogate parents on a preferential basis, thirty-one percent (31%) indicated that the preference would depend on the length of time the child was placed with the foster family. Fifty-eight percent (58%) of respondents said that the length of placement is irrelevant, and 11% did not respond to the inquiry.

^{15[15]} 34 C.F.R. §300.514(d)(1); 55 Pa. Code §3680.62(d).

Local education and early intervention agencies were asked if they maintain a pool of qualified surrogate parents, a strategy which could greatly reduce the length of time a child would wait for a surrogate parent to be appointed.

Stakeholder	Total Responses	Surrogate Pool	No Surrogate Pool
School Districts	45/61	15	30
EI Providers	20/30	9	11
MAWAs	8/13	5	3

Only forty percent (40%) of respondents indicated that they had a surrogate pool.

Finally, respondents *who did not* maintain a surrogate pool were asked how long it takes to appoint a surrogate parent once the need is identified.

Stakeholder	Total Responses	< 1 week	1-2 weeks	2-3 weeks	3-4 weeks	> 4 weeks
School Districts	17/61	5	7	2	1	2
EI Providers	8/30	2	2	2	2	-
MAWAs	7/13	2	4	1	-	-

Seventy-one percent (71%) of the stakeholders reported that it takes one (1) week or more to appoint a surrogate parent, while thirty percent (30%) reported delays greater than two (2) weeks.

Some school districts' comments revealed misunderstandings about who can be appointed:

Until recently, we tended not to favor foster parents because of the potential conflict of interest. Recently, it seems IDEA 97 will allow for foster parents to serve as surrogates.^{16[16]}

At least one school district recognized the problems associated with not appointing the foster parent as a surrogate parent:

^{16[16]} Foster parents were eligible to be appointed as surrogate parents before the 1997 IDEA Amendments.

If the foster parent is not appointed it adds only more confusion for school staff and increases the number of people already involved in a complicated matter.

Overall, the comments on this issue revealed that many stakeholders are not sure about the rules and lack experience with the issue. In light of the general lack of knowledge about the practice of appointing surrogate parents, it is likely that many children needing surrogate parents are not being identified.

V. ARE THINGS GETTING BETTER OR WORSE?

Stakeholders were asked whether providing for foster children's educational needs has changed over the past several years.

Stakeholder	Total Responses	Much Less Difficult	Less Difficult	As Difficult	More Difficult	Much More Difficult
School Districts	53/61	3	13	25	11	1
County OCY Providers	9/10	—	3	1	5	—
Private Providers	44/59	3	11	17	12	1
EI Providers	26/30	—	11	14	1	—
MAWAs	12/13	—	3	6	2	1

Thirty-two percent (32%) of the stakeholders reported that it is easier to serve foster children than in the past.

There seems to be more cooperation between the courts, agencies and schools. (District)

The more the sending agencies are aware of their responsibilities for enrollment and help us stay in contact with parents whose rights have not been terminated, the easier the job is. (District)

The longer the relationship the greater the level of mutual trust. (Private Placement Agency)

Huge improvement. ELC [Education Law Center] has been instrumental in bringing about these improvements. (Private Placement Agency).

The success of the efforts are attributed to building collaborative relationships with individual school district employees. (Private Placement Agency)

However, sixty-eight percent (68%) of respondents found it as hard or harder to serve foster children. The issues these respondents raised include the following:

- There is a lack of uniformity in districts' enrollment procedures.
- Enrollment takes too long, and the problem is exacerbated by delays in obtaining school records.
- Enrollment and other procedures are more difficult where parental rights have not been terminated and biological parents want to be involved in decision-making.
- The number of children in placement is increasing, and their needs are becoming more complicated and more expensive to meet.
- There is a lack of cooperation and coordination among agencies placing and educating students.
- Schools' attitude towards foster children is problematic.

These respondents' comments reflect the varying perspectives of the different stakeholders.

Obtaining the necessary records and/or signatures for enrollment continues to be the greatest barrier to providing kids with quality educational services. (Private Placement Agency)

Again, it is not difficult for us to provide an appropriate education — the difficulty lies with gaining the external support needed and access to information, appropriate agency personnel and signatures. (District)

Most districts have developed their own individual entrance requirements and demand all paperwork (i.e., immunizations, IEPs court orders and school records) before they would enroll a student. (Private Placement Agency)

More foster students moving more times between counties, more subcontracted agencies, more severely disturbed students, less agency follow-up and follow-through. Inexperienced social workers, frequent turnover, more chaos. (District)

School Districts are reluctant to accept foster children. (County C&Y)

Parents retain educational rights and often live in other counties and will not agree to placement they do not see. (Intermediate Unit)

VI. WHAT CURRENT POLICIES HELP OR HURT?

A. Enrollment Policies

Private foster care providers and county agencies were asked to identify school district “policies” they find either helpful or problematic in providing for the educational needs of foster children. Here are some of the helpful policies or practices.

The alternative room program and the employment (thru school district) of guidance counselor specifically for children from Bethany.

If unsure where to place child, a transitional class to assess needs so child not out of school awaiting records, etc.

Children can be placed in new school based on previous IEP and need not be kept out of school until a new one is completed.

3 day enrollment policy.

The area schools allow our staff to sign off on trip permission slips and various school communications.

The school district has assisted with school placements by allowing the child/children to be enrolled in school without all of the necessary transfer of materials being presented at the time of enrollment.

Here are some practices or policies that were perceived as problematic:

[Districts] will not accept verification [without actual documentation] from last school. School districts are slow to search for alternative ed programs for previously expelled students.

Request for records and meetings pre-enrollment. 30 days to place special education kids (verbal not written policy).

The fact that a child cannot be considered for special ed unless request comes from legal guardian who might be difficult to locate or you have to get a court order.

Most school districts reported having formal policies or guidelines regarding the education of children in foster care. Seven school districts identified certain state level directives, such as the PA Department of Education's Basic Education Circulars governing non-resident students living with residents, in foster care, and in children's institutions, and local district policies based on these circulars.^{17[17]} Six districts stated that foster children are governed by the same rules as resident students.

B. Early Intervention Policies

Private providers and county children and youth agencies were asked to identify policies that were helpful or problematic in providing early intervention services to younger children with disabilities. Some responses were:

Asking for parents to be involved even if foster parents.

Surrogate parent policy needs clarification in all counties.

All stakeholders expressed an interest in agency personnel being permitted to sign parental consent forms (which, of course, is not permitted by federal law). This clearly reflects confusion about and discomfort with the current surrogate parent requirements and procedures.

^{17[17]} 24 P.S. §§ 13-1302 (Education of Children Residing with Adult Other than Natural Parent), 13-1305 (The Education of Children Placed in Foster Care), 13-1306 (Non-resident students in Institutions).

VII. WHAT WERE STAKEHOLDERS' RECOMMENDATIONS FOR CHANGES IN POLICY AND PRACTICE?

Stakeholders were asked what state or local level policy changes might help them get education, special education and early intervention services for children in foster care. As you can see, these recommendations reflect the different perspectives among the stakeholders regarding which agency is causing the problems. So, for example, there is a recommendation from a district that students not be enrolled until all educational records have been received, and a recommendation from a placement agency that districts be required to accept children and begin services even if the records are incomplete. These “conflicting” views will need to be considered and harmonized if real reform is to be achieved.

Facilitate Obtaining Parental Consent

- Develop clear state policy on who has the authority to sign necessary consents and paperwork. (Private provider)
- Require local educational agencies to maintain a pool of qualified surrogate parents. (EI provider)

Facilitate the Inter-Agency Transfer of Records

- Districts should be required to keep all records at a central location. (District).
- Districts should give the students copies of their school records when they transfer. (District)
- Foster children's records should be more readily available. The computer age might allow for transfer of records via the Internet while still preserving confidentiality. (Private provider)
- There could be a direct computer link from the County C&Y Agency to the school district's data base to transfer enrollment information. (Private provider).
- School districts should be allowed complete freedom in transferring records to and from each other and the agency.^{18[18]} (Private provider)
- Establish deadline for prompt transfer of records by school districts, and enforce those deadlines. (District).

^{18[18]} Under federal law, there is no need for written parental consent to release education records from one school district to another district in which the student is enrolling. 34 C.F.R. § 99.31(a)(2).

Standardize Enrollment Procedures and Prevent Gaps in Education

- Foster children should be permitted to enroll on an interim basis even though school records have not yet been obtained. (County C&Y)
- Foster children should not be enrolled unless all education records have been presented. (District)
- Placement agencies should give districts prior notice of their intention to enroll a student, whenever possible. (District)
- The Department of Education should create a standardized form for school transcripts and reports of earned educational credits. (Private provider)
- The Department of Public Welfare should establish standardized rules to govern C&Y and private providers in enrolling students. (County C&Y, Private provider)
- The Department of Education should establish time limits for districts to enroll foster care children. (Private provider)
- The Department of Education should develop specific guidelines and an informational manual for all school districts. The two state agencies should develop an inter-agency agreement relating to these issues. (Private provider, County C&Y, District)
- School districts should be required to provide interim educational programs when enrollment is delayed. (Private provider)
- Children should be allowed to remain in their home school district while alternative placements are sought. (Private provider and County C&Y)
- School districts should be required to put one person in charge of foster care students' moves and transitions. (District)
- County C&Y, private providers and School Districts should jointly prepare an enrollment checklist. (District)

Oversight, Monitoring and Training

- PA Office of Children and Youth and PA Department of Education should meet regularly to discuss each others needs. (District)
- Department of Education should provide more oversight and enforcement with regard to legal violations by local educational agencies. (Private provider)

- School districts should be required to assign an independent advocate to each foster child who exhibits in-school difficulty. (County C&Y)
- School districts, County C&Y and private providers need education on policies relevant to children in foster care, and on the special needs and experiences of these children. (Private provider)
- Educate County C&Y workers and private providers on the special education and early intervention process. (County C&Y, EI provider)
- Educate C&Y workers and school districts about surrogate parents. (District).
- Educate Judges and Court personnel about special education and early intervention requirements, particularly regarding parental consent. (EI provider)

Funding

- PDE should be the conduit for educational decisions and monies. To the extent that state law requires the serving school district to turn to the resident school district for funding children in children's institutions, it is a failure. (District)
- The state should provide districts with additional funding to lessen the budgetary impact of those students with very exceptional health or educational needs. There should be "foster impact funds" like there is for migrant workers for those districts having more than their fair share of foster children. (District)

Other Suggestions for Improving the Process

- Foster parents should automatically be appointed surrogate parents.^{19[19]}
(Private Provider)
- There should be better coordination between the County C&Y worker and the caseworker for the private provider. Placement agencies need to be more cooperative in completing necessary paperwork and providing appropriate placement letters. (District)

^{19[19]} Foster parents would still have to meet the federal law requirements that apply to all surrogate parents, *e.g.*, have no conflicts of interest with the child, have necessary skills and knowledge. 34 C.F.R. §300.515(c).

- The state should establish a policy of what it means to make “reasonable efforts” to contact birth parents before surrogate parents can be appointed. (EI provider)
- Private providers and county C&Y agencies shouldn’t place too many foster children in one school district. (District)
- There is a need to improve cooperation and communication among agencies. (District)
- Whenever possible, placement agencies should place children in foster homes located in their own districts. (District)
- Mandate that placement agencies refer foster children to early intervention providers for screening upon placement. (EI Provider)

VIII. WHAT ARE THE EDUCATION LAW CENTER'S FINAL THOUGHTS AND RECOMMENDATIONS?

Even this unscientific and informal survey clearly shows that there is substantial confusion and dissatisfaction among all the agencies who are charged with caring for and educating children in foster care. The agencies’ personnel are confused about the rules of each system; parental consent is sometimes hard to get, resulting in delays in services; enrollment procedures differ widely among school districts; and so forth.

We can and must do better. And it is clear that real reform will require an inter-agency effort that involves the cooperation and commitment of the Departments of Public Welfare and Education. Here are some ideas that are worth serious consideration. Some of these suggestions are proffered with some trepidation, and if adopted must be implemented so as to avoid, whenever possible, breaches of confidentiality or the stigmatization of these youngsters because of their status as “foster children.”

The Pennsylvania Department of Education

The Department of Education, in collaboration with the DPW’s Office of Children, Youth and Families, should establish statewide rules, preferably through state regulation, for enrolling children in foster care. Those rules should include:

- Clarification of the documents and records that must be provided to a district as a condition of enrollment. (We recommend that only proof of age, residence, and immunization records be required.)

- The deadline by which districts must enroll students in foster care from the date that the mandatory information is provided (*i.e.*, within two days).
- Clear direction that, under state law and the federal Constitution, children in foster care must be treated the same as resident students. This should make clear that districts cannot require pre-enrollment meetings for children in foster care as conditions of enrollment unless such meeting are also required for newly arrived resident students.
- Clarification that the foster parent is authorized to enroll a child.
- Clear direction that districts should admit a child in foster care upon the prior district's oral confirmation of a student's immunization, with written confirmation to follow.
- The deadline by which the prior district must transmit the educational records of children in foster care to the enrolling district (*i.e.*, within five days of request).
- Clarification that foster parents should be given preference in selection as surrogate parents when they meet the federal criteria, and are willing to serve in this capacity.
- On the model currently required by federal law for homeless children, allow a child placed in foster care during the school year to continue in his/her last school when feasible, even though the child has been placed with a family in another district, and clarify which agency should provide the child's transportation to and from school.

The Department of Education should establish and maintain a computerized information database, and should require school districts to maintain comprehensive education profiles for children in foster care, including grades, standardized test scores, and special education and early intervention records. Keeping detailed records of information on foster children is important since they can be subject to repeated school transfers.

The Department of Education should require schools districts to screen all children in foster care not identified as in need of special education or early intervention shortly after enrollment to determine whether they should be referred for a comprehensive evaluation to determine whether they need special services.

The Department of Education should establish a mechanism for receiving and acting expeditiously on complaints that a child's enrollment is being unlawfully delayed. If the complaint is confirmed, the Department of Education should require that the school involved take corrective action, which may include the provision of compensatory educational services to the child involved. The Department of Education may also take other enforcement action against the school or school district involved.

The Pennsylvania Department of Public Welfare/Office of Children Youth and Families

DPW/OCYF should establish procedures whereby C&Y and private agency caseworkers collect students' education and related enrollment documents and transmit those records to the enrolling school districts. These procedures should include a checklist and timelines.

DPW/OCYF should require County C&Y agencies and private providers to provide training to their staffs on school enrollment procedures, special education and early intervention procedures, and other matters needed to eliminate confusion and streamline agency procedures.

Inter-Agency Approaches

The Departments of Education and Welfare should establish a dedicated complaint system for investigating and promptly resolving educational problems involving children in foster care, and should staff that system with persons who are knowledgeable about the rules of the DPW/OCYF and the education systems.

Both Departments should identify a funding stream that would help school districts to offer educational and other supports to children in foster care regardless of whether the children have formally been identified as having special needs. In New York City, the Administration for Children's Services and the Board of Education have developed a pilot program known as "Safe & Smart." Caseworkers in five middle schools in the South Bronx are deployed as specialized counselors for about thirty foster children each, providing individual and group support during the school day and after school. These school specialists also help teachers and administrators respond to some of their most troubled foster children.

Both Departments should educate the staff of school districts, County C&Y agencies and private providers about the legal requirements of the various systems, including the surrogate parent requirement and the parental consent and other procedures of the special education and early intervention systems. School district staff also need information and training on some of the unique problems experienced by these children, and how their special needs can best be met.

IX. WHERE DO WE GO FROM HERE?

Some efforts to confront these problems are already underway at both the state and local levels. For example, the Juvenile Law Center, a public interest law firm that advocates on behalf of children in the dependency and delinquency systems, has been involved, by itself or with ELC, in several initiatives. In addition, the State has at least begun to explore some of these issues:

- The Joint State Government Commission, pursuant to Senate Resolution No. 97, enacted December 1, 1999, has convened an Advisory Committee to undertake an ongoing study of the children and youth services delivery system in the Commonwealth. The Committee's charge is to ascertain whether the system is meeting the needs of at-risk children and families and, if it is not meeting those

needs, to recommend appropriate corrective measures. One subcommittee has identified foster children's access to education as one of its priority issues. The subcommittee is currently developing recommendations for potential legislative action (and/or regulatory and policy changes) regarding several of the issues identified in this report. When complete, the subcommittee will present its recommendations to the full Advisory Committee, and, if approved, to the legislative task force to which the Advisory Committee will report.

- JLC worked with ELC, Philadelphia County child welfare professionals, the County's director of Early Intervention services, pediatricians, and developmental psychologists on a project to assure the timely evaluation of foster care children for developmental delays and the provision of early intervention services. On July 2, 2001, the Philadelphia Family Court began using JLC-created consent forms and court orders for evaluations for Early Intervention services and the appointment of surrogate parents. These consent forms and court orders are specifically designed for use in dependency proceedings, to facilitate the provision of early intervention services to children in the foster care system. The forms are being used in all new dependency cases that come into the system, and are discussed and signed during the mandatory court pre-hearing conference. To support the use of the forms, JLC drafted a "Healthcare Checklist" that the City Solicitor's Office reviews during the pre-hearing conference. The Checklist prompts court personnel to think about what referrals should be made for Early Intervention services, as well as other types of healthcare, and to obtain the necessary consents for such services. JLC also wrote a brochure for parents that is being distributed at court, that explains to parents why they may be asked to consent to an evaluation for Early Intervention services for their children, or to consent to the appointment of a surrogate parent to act on their child's behalf while the child is in foster care .
- ELC and JLC have been meeting with the Philadelphia County Early Intervention director and members of the Department of Human Services to discuss strategies for tracking foster children as they change placements to avoid gaps in services. The two groups are also working with the county director to identify members of the Philadelphia legal community who could be trained to act as surrogate parents on behalf of children in foster care. (A pool of trained surrogate parents are needed for appointment in those cases where it is not appropriate or possible for the foster parent to act as the surrogate.)

- ELC and JLC successfully lobbied for state regulations for the youngest children with disabilities that would allow qualified foster parents to act as surrogate parents to help obtain early intervention services.

I. CONCLUSION

This report has identified barriers to foster children enrolling in school and gaining access to educational services. It has also offered some suggestions for state and local agency decision-makers, legislators and schools to consider in improving these children's educational success and well-being.

The Commonwealth of Pennsylvania is responsible for many thousands of children in foster care. Children in foster care, by definition, often do not have birth parents to fight for them, and must rely on agency and district staff to meet their complex educational and other needs. Unless the problems described in this report are confronted and resolved, what chance to learn – and eventually to compete with others in higher education and the job market – will these children have? The Pennsylvania Departments of Education and Public Welfare must undertake an inter-agency response to this problem. We hope this report will provide some impetus and insight in the process of reform.
